

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks of September 11, 2001

**03 MDL 1570 (RCC)
ECF Case**

This document relates to:

*New York Marine and General Insurance Company v. Al Qaida, et al., 04-CV-06105
(RCC)*

**REPLY MEMORANDUM IN OPPOSITION TO PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS OF DEFENDANT MAR-JAC POULTRY, INC.**

On August 10, 2005, Mar-Jac Poultry, Inc. (“Mar-Jac”), filed its Motion to Dismiss New York Marine and General Insurance Company’s (“NYMAGIC”) First Amended Complaint (“1AC”), pursuant to Federal Rule of Civil Procedure 12(b)(6) (“Motion to Dismiss”). (Docket # 153, 154). NYMAGIC filed its Opposition to Mar-Jac’s Motion to Dismiss on October 7, 2005. (Docket # 235). Its Opposition stated:

In accordance with the Court’s Case Management Order #2, on September 30, 2005, NYMAGIC filed its Second Amended Complaint in this action (“2AC”). ***The allegations in the 2AC are virtually identical to the allegations contained in the First Amended Complaint filed by the plaintiffs in Federal Insurance Co., et al. v. al Qaida, et al., 03 CV 06978 (RCC), an action also consolidated in MDL 1570*** (“the *Federal Insurance Action*”). Accordingly, and [sic] deficiencies contained in NYMAGIC’s 1AC have been cured by the 2AC.

(Opposition, p. 2) (emphasis added). Thereafter, NYMAGIC acknowledged that the arguments raised by Mar-Jac in its Motion to Dismiss “are substantially identical to the arguments contained in the motion to dismiss filed on May 10, 2004, by Mar-Jac against the plaintiffs in the *Federal Insurance Action*.” (*Id.*). Mar-Jac agrees that its arguments to dismiss now applicable to NYMAGIC’s 2AC are “substantially similar” to its initial arguments raised in this action (Docket # 153, 154), as to NYMAGIC’s 1AC, as well as its arguments raised in the *Federal Insurance* action, as stated above.

On September 21, 2005, the Court issued its Opinion and Order on Mar-Jac’s Motion to Dismiss the First Amended Complaint filed in the *Federal Insurance Action*, finding, in part, that “[t]he *Federal* complaint does not provide Mar-Jac Poultry with notice as to how it could be liable for the terrorist attacks.” *In re Terrorist Attacks on September 11, 2001*, 2005 WL 2296673, at *25 (S.D.N.Y. 2005) (citing *Boim II*, 291 F.3d at 1012). The Court thereafter granted Mar-Jac’s Motion to Dismiss. *Id.*

Accordingly, based upon the Court's previous finding as to the *Federal Insurance* complaint ("1AC") against Mar-Jac, together with NYMAGIC's admission that the allegations against Mar-Jac in its 2AC are virtually identical to the allegations contained in the *Federal Insurance* complaint ("1AC"), Mar-Jac argues that the Court should make a similar finding in this action (NYMAGIC's 2AC fails to provide Mar-Jac with notice as to how it could be liable for the terrorist attacks), and grant its Motion to Dismiss.¹

Respectfully submitted, this 24th day of October, 2005.

/s/ Wilmer Parker

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1. Mar-Jac contends that NYMAGIC "virtually" concedes that its 2AC should be dismissed based upon findings and conclusions of law found within the Court's September 21, 2005, Order. Clearly, NYMAGIC does not identify any allegations in its 2AC which would justify a contrary action by the Court.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that the foregoing Reply Memorandum in Opposition to Plaintiff's Opposition to Motion to Dismiss of Defendant Mar-Jac Poultry, Inc., has this day been filed on the Court's Electronic Case Filing (ECF) System, and that copies have been served on all parties who are registered ECF filing users. Copies will be sent to all parties who are not ECF filing users by United States mail.

This 24th day of October, 2005.

/s/ Wilmer Parker

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